REMARKS

This amendment is responsive to the non-Final Office Action mailed on June 1, 2009. Claims 1-16 were pending in this application prior to this amendment, and claims 1, 2, 4, 5, 7, 9, 10, 15 and 16 stand rejected. Claims 1, 5, 6, 8, 11, and 13 have been amended. Claims 2-4, 10, 12, and 14-16 have been canceled. In view of the following remarks, Applicants respectfully solicit reconsideration in view of the following remarks.

Allowable Subject Matter

The Examiner indicated that claims 6, 8, 11, and 13 contained allowable subject matter, but were objected to for depending on a rejected base claim. Applicants have amended each of these claims as separate independent claims containing all of the subject matter of the base claim and intervening claims, as suggested by the Examiner. Claims 11 and 13 have also been amended with terminology that is consistent with support found in the specification. Applicants respectfully request that the objection to claims 6, 8, 11, and 13 now be withdrawn.

Rejections under 35 USC §102

The Examiner has rejected claims 1, 9, and 16 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,666,877 to Morgan et al ("Morgan '877"). Although Applicants do not believe Morgan '877 discloses each element of independent claim 1, Applicants have now amended claim 1 for further clarification. Claim 1 now recites an apparatus for affixing a tendon or ligament to a bone including "a retaining member coupled to said elongate tensile member and disposed at least partially within said helical anchor to define an interior space for receiving fibrous tissue of the tendon or ligament." The Examiner admits that Morgan '877 fails to teach a retaining member (*See* Office Action, pg. 3). Thus, amended claim 1 is not anticipated by Morgan '877.

Claim 9 depends from claim 1 and recites a unique combination of elements not anticipated by Morgan '877 for at least the same reasons. Applicants respectfully request that the rejection of claims 1 and 9 now be withdrawn.

The Examiner has rejected claim 10 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,741,330 to Hayhurst ("Hayhurst '330"). Claim 10 has been cancelled in accordance with the aforementioned amendments to claims 11 and 13, which renders this rejection moot.

Rejections under 35 USC §103

The Examiner has rejected claims 2, 4, 5, 7 and 15 under 35 U.S.C. § 103 as being obvious over Morgan '877 in view of Hayhurst '330. Of the rejected claims, claims 5 and 7 remain pending and currently depend from independent claim 1. Claim 1 recites an apparatus for affixing a tendon or ligament to a bone including an elongate tensile member, "a helical anchor coupled with said elongate tensile member and configured to be placed within the tendon or ligament; [and] a retaining member coupled to said elongate tensile member and disposed at least partially within said helical anchor to define an interior space for receiving fibrous tissue of the tendon or ligament." Claim 5 further recites a slidable locking member which holds the retaining member at a desired location on said elongate tensile member. The cited combination of Morgan '877 and Hayhurst '330 does not render amended claim 1 obvious at least because the combination fails to disclose each element of claim 1.

Morgan '877 is directed to an apparatus for securing a suture to a bone. As illustrated in Figs. 2-4, Morgan '877 discloses a suture anchor (10) having an elongate body (12) with external threads (18) for mounting the anchor (10) into a bone (11). The anchor (10) further includes a longitudinal bore (24) adapted to hold a spring member (32) having a first end (34) welded into the longitudinal bore (24) and an eyelet

(38) at a second end (36). The eyelet (38) is adapted to couple to a suture loop (44) secured to a soft tissue (42). The spring member (32) acts to pull the eyelet (38) within the suture anchor (10) and thus maintain close contact of the soft tissue (42) and the bone (11). Although the Examiner admits Morgan '877 fails to recite a retaining member or a slidable locking member, the Office Action combines Hayhurst '330 with Morgan '877 in an attempt to overcome these deficiencies.

Hayhurst '330 is directed to an anchor for manipulating soft tissue or cartilage. As shown in Figs. 15-17, Hayhurst '330 discloses an anchoring device (80) coupled to a suture (82) and including barbs (88) extending outwardly from the anchoring device (80). The anchoring device (80) is inserted into a socket (100) drilled into a bone (96), and the barbs (88) engage the socket (100) to hold the anchoring device (80) within the socket (100). The suture (82) extends through a ligament (98) and a retainer (68) is slid onto the suture (82) behind the ligament (98) to hold the ligament (98) to the bone (96). The retainer (68) is illustrated in detail at Fig. 10 and includes central slits (70, 72) forming pointed corner flaps (71, 73) that engage the suture (82). The corner flaps (71, 73) prevent reversed sliding of the retainer (68) along the suture (82). The retainer (68) also includes raised points (74) adapted to engage ligament (98) tissue to immobilize the retainer (68) after the ligament (98) is anchored to the bone (96).

The cited references fail to disclose the elements of amended claim 1 for several reasons. The Examiner cites the spring member (32/36) of Morgan '877 as the "helical anchor" and the raised points (74) on the retainer (68) of Hayhurst '330 as the "retaining member" of claim 1. However, claim 1 now requires that the helical anchor is configured to be placed within the tendon or ligament. In contrast, the spring member (32) of Morgan '877 is welded within the longitudinal bore (24) of the suture anchor (10),

and the helical portion of the spring member (32) never engages the soft tissue (42). Claim 1 further requires that the retaining member be at least partially disposed within the helical anchor to define an interior space for receiving fibrous tissue. Even if the retainer (68) with raised points (74) of Hayhurst '330 were added to the Morgan '877 apparatus as Examiner describes, the retainer (68) would not be "at least partially disposed within" the spring member (32). Thus, the combination fails to teach a retaining member at least partially disposed within the helical anchor, and claim 1 is allowable over the cited references. Claims 5 and 7 depend from independent claim 1 and recite unique combinations of elements also not taught by the cited references for at least the same reasons. Applicants respectfully request that the rejection of claims 5 and 7 now be withdrawn.

Conclusion

Applicants respectfully submit that the foregoing is a full and complete response to the Non-Final Office Action mailed on June 1, 2009. If the Examiner believes any matter requires further discussion, the Examiner is respectfully invited to telephone the undersigned attorney so that the matter may be promptly resolved.

Applicants do not believe that any fees are due in connection with this response. However, if such petition is due or any fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to Deposit Account 23-3000.

Respectfully submitted,

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